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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOJIRO KINOSHITA and KENJI TESHIMA

Appeal 2008-0554
Application 10/812,358
Technology Center 3600

Decided: May 30, 2008

Before TERRY J. OWENS, DAVID B. WALKER, and JOSEPH A. FISCHETTI,
Administrative Patent Judges.

FISCHETTI, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 2, 5, and 12-17. Claims 7, 9, and 11 are withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b). (2002)

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a backrest for a chair having a spring fabric covering, which is said to retain the shape of a support face when loaded by a seated person thereby maintaining the appearance of the chair (Specification 1:14-28).

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A backrest for chair comprising
frame elements arranged in pairs at right and left sides,
a flexible support member that bridges the frame
elements to support a load of a body of a seated person,
wherein the flexible support member bends concaved
rearward; and
an adjust mechanism that can change a degree the
support member is bent concaved rearward and that can
maintain the degree the support member is bent concaved
rearward against the load of the seated person;
wherein the adjust mechanism is at least one engaging
structure between a pin mounted on either one of the
support member and the frame element and at least one
engaging hole formed on the other of the support member
and the frame element, and an engaging portion, wherein
the pin can engage the engaging hole in various
positions.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Sheldon	US 4,153,293	May 8, 1979
Peterson	US 6,220,661 B1	Apr. 24, 2001

The following rejections are before us for review.

1. Claims 1-2, 5, and 12-14 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sheldon.
2. Claims 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon in view of Peterson.

ISSUES

The anticipation issue before us is whether Appellants have shown that the Examiner erred in rejecting claims 1, 2, 5, and 12-14 under 35 U.S.C. § 102(b) as anticipated by Sheldon. This anticipation issue turns on whether Sheldon expressly or inherently discloses a flexible support member which bends concaved rearwardly, and whether Sheldon discloses an adjust mechanism having a pin that can engage an engaging hole in various positions..

The second issue is whether Appellants have sustained their burden of showing that the Examiner erred in rejecting the claims on appeal as being unpatentable under 35 U.S.C. § 103(a) over Sheldon in view of Peterson. This issue also turns on whether the combination includes a flexible support member which bends concaved rearwardly, and an adjust mechanism having a pin that can engage an engaging hole in various positions.

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Examiner noted the following correspondence between the elements of claim 1 and Sheldon:

Sheldon discloses the use of a backrest for chair (10) comprising frame elements (48) arranged in pairs at right and left sides (figure 2), a flexible support member (22) that bridges the frame elements to support a load of a body of a seated person, the flexible support member bends concaved rearward (when the support member is adjusted) and an adjust mechanism (figure 1, columns 1-2) that can change a degree of the support member is bent concaved rearward and that can maintain the degree of the support member is bent concaved rearward against the load of the seated person; wherein the adjust mechanism is engaging structure between a pin (52) one of the support member and the frame adjust mechanism mounted on either element and at least one engaging hole (51) formed on the other and an engaging portion where the pin can engage the engaging hole in various positions, see figures 3 and 5.

(Answer 3).

2. Appellants do not challenge the findings supra (FF 1) except for the Examiner's position that the flexible support member 22 in Sheldon bends concaved rearward and that Sheldon discloses an adjust mechanism having a pin that can engage an engaging hole in various positions (Appeal Br. 5, 6).

3. Figures 1 and 3 in Sheldon show a flexible member 22, 95 which is mounted to the right side of the frame using cleats 30, 32 and 96, 98 fixed to the

ends of the flexible member and connects to lips 21, 24 and 86, 90 mounted to the frame (Sheldon col.2, 14-23; col.4, ll. 12-17; Figures 1 and 3).

4. The flexible member 22, 95 in Sheldon as shown in Figures 1 and 3 is bowed or bent so as to create a concave shape deepening from left to right. (Sheldon, Figures 1 and 3)

5. The embodiment of Figure 1 in Sheldon discloses that the bottom support
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...is fastened to the foot of the frame of the support by means of a flexible lap of webbing 70 extending from the upper side of the envelope rearwardly about the part 46 and mutually interengageable snap fasteners 72--72 at the distal end of the lap and on the underside of the envelope. The bottom support, while completely flexible with respect to the back support provides, when a person occupies the seat, means for holding the foot of the back support against the back of the seat. (Sheldon, col. 3, ll. 41-50)

Thus, the bottom support 12 is capable of being rotated about the bottom frame member 46 180 degrees from the position shown in Figure 1 such that the flexible member 22 and the bottom support 12 are on opposite sides of the frame 48.

6. Sheldon discloses an adjustment mechanism which includes an elongated shaft-like member or bolt 52 which is cylindrical in shape and is threaded at its end. The bolt 52 is further engaged within an elongated hole or slot 50 and is selectively positionable within the length of the slot 50 so as to be locked in place by knurled nuts 54 threaded onto to the threaded ends of the bolts 52 (Sheldon, col.2, ll. 64-68, col.3 ll. 1-4; Figure 1).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

Field of use recitations are typically found in the preamble of claims, and the weight given them largely depends on how the recitation is subsequently used in the body of the claim. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305-06 (Fed. Cir. 1999). Whether a preamble statement that the “patent claims a method of or apparatus for...[x] is not merely a statement describing the invention’s intended field of use ... [depends upon if] that statement is intimately meshed with the ensuing language in the claim.” *Id.* at 1306. In other words, “if the preamble merely state[s] a purpose or intended use and the remainder of the claim completely defines the invention independent of the preamble,” it does not constitute a limitation. *Lipscomb’s Walker on Patents, 3rd Edition, Vol. 3*, § 11.11 at p. 361 (citing *Marston v. J.C. Penney Co.*, 353 F.2d 976, 986 (4th Cir. 1965)); *see also, Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997); *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989) (An element initially recited in the preamble, is thereafter fully incorporated into the body of the claim so as to breathe life and breath into it by setting forth the complete combination).

ANALYSIS

The rejections are affirmed as to claim 1. Appellants do not provide a substantive argument as to the separate patentability of claims 2 and 12-17 that depend from claim 1, which is the sole independent claim among those claims. Therefore, we address only claim 1. Claims 2, and 12-17 stand or fall with claim 1. *See*, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants' first argument to each of the 35 U.S.C. § 102 (b) and 35 U.S.C. § 103(a) rejections is based on a perceived deficiency of Sheldon (FF 2) in that the flexible member of Sheldon bends in a forward direction rather than rearwards as claimed (Appeal Br. 2-6). Inasmuch as Appellants raise the same issue with respect to each of these rejections, we discuss the two rejections together.

Specifically, Appellants argue that:

Sheldon does not teach or suggest a support member that bridges the frame elements and that is bent "concaved rearward" to support a load of a body of a seated person. Sheldon instead describes that the backrest is bowed "convexly forwardly with respect to the frame." *See* column 2, lines 30-31. That is, the backrest adjusts forward against the back providing a lumbar-type support. The bending occurs in a vertical direction

between top and bottom frames instead of a horizontal direction between side frames as occurs with the support member of the instant claims. In addition the bending is forwardly (similar to a lumbar support), not rearwardly. (Appeal Br.5, 6)

We are not persuaded by these arguments for the reasons that follow.

First, in the preamble of claim 1, Appellants positively recite only a backrest, but not a chair. The reference made to a chair is done only in the limited context of an intended use statement, e.g., using the word “for”. Since the remainder of claim 1 completely defines the invention independent of the preamble, the word “chair” does not constitute a limitation. *See Pitney Bowes, Inc. at 1305-06*. Thus, claim 1 is interpreted as reciting a backrest without requiring it to be connected to a chair structure.

Appellants’ argument that Sheldon describes a backrest bowed “convexly forwardly with respect to the frame” is unpersuasive because if so, then conversely, Sheldon discloses a backrest which is also concave rearwardly which is what Appellants’ claim 1 requires. Furthermore, the embodiment of Figure 1 in Sheldon discloses that the bottom support 12 “...is fastened to the foot of the frame of the support by means of a flexible lap of webbing 70 extending from the upper side of the envelope rearwardly about the part 46 and mutually interengageable snap fasteners 72--72 at the distal end of the lap and on the underside of the envelope.” (FF 5) Thus, the bottom support 12 is completely flexible with respect to the back support and thus is capable of being rotated about the bottom frame member 46 180 degrees from the position shown in Figure 1 such that the flexible member 22 and the bottom support 12 are on opposite sides of the frame 48 (FF 5).

As such, Sheldon is capable of being configured to function in the manner claimed, e.g., positioning of the back rest so that a flexible support member bends concave rearward relative to the seated person. *See In re Schreiber*, 128 F.3d 1473, at 1478-1479 (Fed. Cir. 1995).

Appellants also argue that the flexible member 22, 95 in Sheldon bends between top and bottom frames instead of a horizontal direction between side frames. (Appeal Br. 5, 6) However, the Appellants' arguments "fail from the outset because . . . they are not based on limitations appearing in the claims . . .," and are not commensurate with the broader scope of claim 1, which merely recites that the flexible member be bent concave rearward without mention of top to bottom or side to side flexing. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

Appellants next argue that "Sheldon further does not describe an adjust mechanism having a pin that can engage an engaging hole in various positions. Instead, Sheldon uses a screw bolt (not a pin) which is turned to change the position of bar 20." (Appeal Br. 6) We are not persuaded by this argument because Sheldon does disclose an elongated shaft-like member or bolt 52 which is read as a pin by virtue of its similar cylindrical shape and being threaded only at its end (FF 6). The bolt 52 is further engaged within an elongated hole or slot 50. *Id.* In Sheldon, the bolt 52 is also selectively positionable along the length of the elongated hole 50 and is locked in place by the knurled nuts 54 (*Id.*), and thus engages the hole in various positions as required by claim 1.

Accordingly, we sustain the rejections of claims 1, 2, 5, and 12-14 under 35 U.S.C. 102(b) as being anticipated by Sheldon and claims 15-17 under

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35 U.S.C. 103(a) as being unpatentable over Sheldon in view of Peterson.

CONCLUSIONS OF LAW

We conclude:

We affirm the rejection of claims 1, 2, 5, and 12-14 under 35 U.S.C. 102(b) as being anticipated by Sheldon.

We affirm the rejection of claims 15-17 under 35 U.S.C. 103(a) as being unpatentable over Sheldon in view of Peterson.

DECISION

The decision of the Examiner to reject claims 1, 2, 5, and 12-17 is
AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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